

Office of Chief Counsel  
Internal Revenue Service

**memorandum**

CC:SB:7:SJ:GL-126211-01  
LBBelote

date: JUL 20 2001

to: B. Jane Perkins, Senior Associate Advocate  
Taxpayer Advocate Service  
San Jose, California

from: Laura B. Belote, Attorney (SBSE)  
Associate Area Counsel, Area 7  
San Jose, California

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subject: [REDACTED], [REDACTED]  
Computation of Collection Statute

DISCLOSURE STATEMENT

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse affect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

INTRODUCTION

This Chief Counsel Advice responds to your memorandum dated April 30, 2001. In accordance with I.R.C. §6110(k)(3), this Chief Counsel Advice should not be cited as precedent.

DISCUSSION

Issue and Conclusion

Advice has been requested by the Taxpayer Advocate Service as to the correct computation of the statute of limitations for collection after assessment of additional taxes owed by taxpayer [REDACTED]. Our office has concluded that the statute of limitations has expired.

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**Facts**

According to the information submitted to Area 7 Counsel, the Internal Revenue Service (hereinafter "I.R.S." or "Service") assessed taxes against [REDACTED] on [REDACTED] in the amount of \$ [REDACTED] for the tax period ending [REDACTED] (hereinafter "[REDACTED] tax year"). In addition, on [REDACTED], the Service assessed taxes in the amount of \$ [REDACTED] against [REDACTED] for the period ending [REDACTED] (hereinafter "[REDACTED] tax year"). B. Jane Perkins, who requested this advice from counsel, has informed our office that at this point, only the [REDACTED] tax year is in issue. The amount owed for the [REDACTED] tax year has apparently been paid in full.

A collection technical advisor in the Taxpayer Advocate Office in Oakland has computed the statute expiration date on collection for the [REDACTED] tax year to be [REDACTED]. The Service apparently has very little of the original supporting documentation at this point in time; the statute computation (at least for the [REDACTED] tax year) appears to be based upon computer-generated nonverbal transcript information. The taxpayer, [REDACTED], has made the argument that the statute of limitations on collection after assessment has already expired for the [REDACTED] tax year. He has requested that the Service provide him with statute computations to support the assertion that the statute is still open. In addition, while the transcript shows that the collection date was extended to [REDACTED] on [REDACTED] (the transcript shows a "550" posting on this date), the taxpayer maintains that he did not sign or submit a collection waiver at any time. The Service has been unable to locate any Form 900 (Tax Collection Waiver) signed by the taxpayer.

According to the transcript for the [REDACTED] tax year, the following events occurred to suspend / extend the statute of limitations on collection:

1. [REDACTED] to [REDACTED] - Offer in Compromise (hereinafter "OIC") pending (eventually rejected). Length of time during which OIC was pending = 1 yr., 7 months, 21 days.
2. [REDACTED] to [REDACTED] - Bankruptcy litigation pending. Length of time during which bankruptcy was pending = 3 yrs., 9 months, 29 days.

3. [REDACTED] to [REDACTED] - OIC pending. Length of time during which OIC was pending = 1 yr., 4 months, 5 days.
4. [REDACTED] to [REDACTED] - OIC pending. Length of time during which OIC was pending = 4 months, 12 days.
5. [REDACTED] to [REDACTED] - Bankruptcy litigation pending. Length of time during which bankruptcy pending = 1 yr., 9 months, 1 day.

The agent added each of the above time periods together and computed the statute expiration date for the [REDACTED] tax year by counting forward a total of 9 years, 4 months and 16 days from [REDACTED]. She used the [REDACTED] date instead of the original statute expiration date of [REDACTED] because, according to the transcript, the collection date was extended to [REDACTED] on [REDACTED]. This resulted in a statute expiration date of [REDACTED]. She added one more year (6 months for each bankruptcy litigation period per I.R.C. §6503(h), discussed in footnote 1 below), and finally, added four additional years (due to the Revenue Reconciliation Act of 1990, again, discussed below). Consequently, the agent arrived at a collection statute expiration date of [REDACTED].

Despite what the transcript shows, the taxpayer, again, asserts that he did not sign or submit a collection waiver at any time. There is support for the taxpayer's contention in an email dated [REDACTED] from Paula Mills, Settlement Officer in the Los Angeles Appeals Office. According to this email, which was included in the documentation provided to counsel from the Taxpayer Advocate Service, the "550" posting on [REDACTED] on the nonverbal transcript was not necessarily based on a Form 900 waiver. Apparently, when the assessment for the [REDACTED] tax year was transferred from the non-master to master file in the mid/late [REDACTED]s, there was no way to systematically post certain transactions (e.g., OICS). Consequently a manual Collection Statute Expiration Date computation was computed to account for the pendency of the offer, plus one additional year. This resulted in the posting of a "550."

In the file given to our office, there is a "pending transactions" transcript for [REDACTED]'s [REDACTED] tax year, showing an OIC pending from [REDACTED] to [REDACTED]. Adding the period during which this OIC was pending, plus an additional year, to the original statute expiration date would result in a

new statute expiration date of [REDACTED]. This date is shown next to a "550" posting. For some reason unknown to this office, these transactions are all "deleted unbootable," and thus should not be upon for statute computation. The transcript for the taxpayer's [REDACTED] tax year which was relied upon for statute computation shows an OIC pending between [REDACTED] and [REDACTED]. Adding the length of time during which this OIC was pending, plus one additional year, to the statute expiration date of [REDACTED], and subtracting 3 months and 18 days, the period during which both the bankruptcy litigation and OIC were pending ([REDACTED] to [REDACTED]) again yields a new statute of limitations date of [REDACTED]. On the other hand, the "550" posting was entered on [REDACTED], prior to the date that bankruptcy litigation ensued. Finally, definer codes are required with "550" postings. This transcript does not include a definer code for the [REDACTED] "550."

#### Law

In general, the presumption of correctness attaching to tax assessments does not attach to extension of the statute of limitations on collection. The burden of proving the existence and validity of a collection waiver lies with the Government. United States v. McGaughey, 977 F.2d 1067, 1071 (7<sup>th</sup> Cir. 1992). When the taxpayer raises the statute of limitations as a defense to collection and the original collection period has expired, the statute is presumed expired and the burden of showing that it was extended, either by law or by agreement, shifts to the Government. Schenk v. Commissioner, 35 T.C.M. 1652, 1654 (1976). The Service may use circumstantial evidence for this purpose. See United States v. Conry, 631 F.2d 599 (9<sup>th</sup> Cir. 1980). Thus, the Service may usually rely on its computerized records to show that the statute of limitations on collections was extended or suspended due to bankruptcy litigation, offer in compromise, or by agreement with the taxpayer. See United States v. Morgan, 781 F.Supp. 1219 (E.D. Mich. 1991).

Before 1990, §6502(a) of the Internal Revenue Code (hereinafter "I.R.C." or "Code") provided for a six-year statute of limitations for the enforcement of an income tax assessment by court proceedings. The Revenue Reconciliation Act of 1990 amended I.R.C. §6502(a) by extending the statute from six to ten years. This amendment applied to any taxes assessed after the date of the enactment of the Act (November 5, 1990) and to any taxes assessed on or before the enactment date, provided that the six-year collection period had not expired. If the Service fails

to collect an unpaid tax before the expiration of the collection period, it may not collect a tax after the period has expired.

In United States v. Georgi, 98-1 U.S.T.C. ¶50,406, the Court held that successive offers in compromise, which tolled the limitations period for collecting 1981 assessments, also had the effect of causing the statutory period to extend beyond November 5, 1990. Consequently, the collection period was lengthened from six to ten years due to the enactment of the Revenue Reconciliation Act of 1990. Thus, a 1997 complaint by the Service to collect the 1981 assessment was still timely. In addition to offers in compromise, it has also been held that the ten-year statute of limitations applies in a situation where the six-year statute of limitations was extended due to the filing of a bankruptcy petition and the tolling of the statute of limitations during the pendency of the bankruptcy. See e.g., In re Dakota Industries, Inc. 91-2 U.S.T.C. ¶50,467 (Bankr. D.S.D. 1991). Finally, In Kaggen v. I.R.S., 94-1 U.S.T.C. ¶50,269 (E.D.N.Y. 1994), aff'd, 57 F.3d 163 (2<sup>nd</sup> Cir. 1995), the taxpayer, on September 5, 1985, signed a Form 900 extending the six-year statute of limitations on collection to December 31, 1991 (the taxes were assessed on April 12, 1982). On November 5, 1990, Congress amended I.R.C. §6502(a)(1) to extend the statute of limitations from six to ten years. Accordingly, the I.R.S. took the position that the Congressional amendment extended the limitations date until April 12, 1992, rather than December 31, 1991. The Court agreed that the amended ten-year statute of limitations applies to a situation in which the original statute of limitations was extended beyond the initial six-year period.

Prior to the enactment of the 1998 Revenue Reconciliation Act, the Service could extend the statute of limitation under I.R.C. §6502 by agreement with the taxpayer at any time prior to the expiration of the ten-year statutory period. This agreement took the form of a waiver of the collection statute by the taxpayer, most often accomplished through a Form 900, Tax Collection Waiver. An extension or waiver of the normal period for collection is effective where (1) the agreement is in writing; (2) the agreement is entered into before the expiration of the statutory period or prior extension; and (3) the agreement is executed by both the taxpayer and an authorized delegate of the Commissioner. I.R.C. §6502(a).

For offers in compromise submitted prior to June 19, 1999, the running of the statute of limitations is suspended by the

taxpayer's submission of an offer in compromise for the period during which such offer is pending and one year thereafter. This waiver is required to enable the government to consider the offer without suffering prejudice since the period of limitations on collection runs while the offer is being considered. Thus, on submission of an offer, the period of limitations on collection is extended by one year.

The I.R.C. also contains other provisions that operate to toll the period for collection upon the occurrence of certain event. For example, I.R.C. §6503 suspends the running of the statute of limitations for collection when the assets of the taxpayer are in the control or custody of a court, when the taxpayer is outside the United State for more that six months, or when the Service is prohibited from collection because the taxpayer has filed for bankruptcy.<sup>1</sup> I.R.C. §6503(b), (c), (h). Such suspensions act to toll the collection statute even where it has previously been extended by agreement to a date certain. See, e.g., Klingshirn v. United States, 147 F.3d 526, 528 (6<sup>th</sup> Cir. 1998). In such cases, the statute of limitations is established by the tax collection waiver and the suspension of the statute acts to further extend the period for collection from that date forward. See Kaggen v. I.R.S., supra. If the collection period with respect to a particular liability has been waived or suspended on multiple occasions, the collection period is determined by giving effect to each suspension or waiver in the order in which they occurred, counting periods during which suspensions overlapped only once. See, e.g., United States v. First Midwest Bank, 1997 U.S. Dist. LEXIS 16913 (N.D. Ill. 1997).

### Analysis

#### Statute Expiration Date If No Form 900 Was Submitted

The transcript for [REDACTED]'s [REDACTED] tax year shows a "550" posting on [REDACTED]. However, while it is true that tax transcripts are legally presumed to be correct, that presumption may be rebutted by evidence to the contrary. United States v. Forma, 90-1 U.S.T.C. ¶50,326 (S.D.N.Y. 1989), vacd. and

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<sup>1</sup> Under I.R.C. §6503(h), in a case under title 11 of the United States Code, the running of the period of limitations on collection is suspended for the period during which the Service is prohibited by reason of such case from collecting and six months thereafter.

remd. on another issue, 95-1 U.S.T.C. ¶50,012 (2<sup>nd</sup> Cir. 1994). See also, Malkin v. United States, 2000-1 U.S.T.C. ¶50,240 (S.D.N.Y. 2000), affd. 243 F.3d 120 (2<sup>nd</sup> Cir. 2001). In [REDACTED]'s case, the taxpayer vehemently denies that he ever signed a Form 900, Tax Collection Waiver. The Service is unable to locate any such form. Though the nonverbal transcript shows a "550" posting, a settlement officer in the Los Angeles Appeals Office determined that this posting did not necessarily mean that a waiver had been submitted. Further, this attorney arrives at a [REDACTED] date when computing the statute expiration date taking into account the submission of an OIC, both on the "pending transaction" transcript and the transcript on which the Collection Technical Advisor relied in computing the statute of limitations. We asked an Offer Specialist and a Supervisory TE Assistant to review the transcript. Both concluded that the "550" posting was **not** due to the submission of a Form 900.

The undersigned attorney also spoke with Frederick Schindler, an attorney in Branch 2 of Collection, Bankruptcy and Summonses, of the Procedure and Administration Division about this case. Mr. Schindler thought that the circumstances surrounding the "550" posting seemed odd and noted that the [REDACTED] date, approximately 2 1/2 years after the original statute expiration date, was quite unusual. According to Mr. Schindler, during the time that the Form 900 was allegedly submitted, most collection statutes were extended to a December 31 date, and for very long periods of time. He thought it was doubtful that a Form 900 had actually been submitted in this case. Considering all of the above factors, our office has concluded that it is very unlikely that the taxpayer submitted a Form 900, extending the collection statute expiration date to [REDACTED].

Keeping the above legal principles in mind and under the theory that the taxpayer **did not** submit a Form 900, our office has calculated the statute expiration date by taking the following steps (please see attached computation for detail):

1. [REDACTED] = Assessment date for [REDACTED] tax year.
2. [REDACTED] to [REDACTED] = Assessment date to submission date of first OIC.
3. [REDACTED] to [REDACTED] = First OIC pending. Statute of limitations is suspended approximately one year, 7

months, 21 days (length of time during which OIC is pending), plus one year.

4. [REDACTED] to [REDACTED] = OIC and Bankruptcy litigation pending. Statute of limitations suspended during this time. The period of time during which the statute is suspended due to the OIC and due to the bankruptcy litigation is counted only once.
5. On 11/5/90, Congress amended IRC §6502(a)(1) to extend the statute of limitations from six to ten years. Because the statute of limitations has not expired as of this date, the amended statute provides for the expiration of the statute of limitations in this case to have occurred on [REDACTED], ten years after the date of the assessment.
6. [REDACTED] to [REDACTED] = The statute of limitations is suspended during the period between first and second bankruptcy litigations. According to Mr. Schindler, since the second bankruptcy was filed less than six months after the first ended, the Service may not add the extra six months per IRC §6503(h) twice. Instead, the statute would be suspended continuously from the filing of the first case ([REDACTED]) until the end of the second ([REDACTED]) plus six months.
7. [REDACTED] to [REDACTED] = Second bankruptcy pending. The statute of limitations is suspended during this time, plus six months per IRC §6503(h).
8. Statute of limitations resumes on [REDACTED]. The statute expiration date at this point is [REDACTED]. Per the Revenue Reconciliation Act of 1990, the statute of limitations has been extended by four years. Accordingly, the new statute expiration date is [REDACTED]. Thus, the statute of limitations on collection has expired.

Although two more OICS were apparently submitted by the taxpayer on [REDACTED] and [REDACTED], these OICS would not be processable if there were submitted when bankruptcy litigation was pending. See IRM 5.8.3.3(2) and (4). Consequently, these OICS should not be considered in computing the statute expiration date. Thus, if the taxpayer did not submit a Form 900, the



statute of limitations would have already expired. Mr. Schindler, our attorney contact in National Office, concurred with this analysis and agreed that the statute would have already expired.

**Statute Expiration Date If Form 900 Was Submitted**

After computing the statute expiration date as if the taxpayer had submitted a Form 900 extending the statute expiration date to [REDACTED], our office has again determined that the statute of limitations on collection has expired.

This statute expiration date was determined in the following manner (please see attachment for details):

1. [REDACTED] = Assessment date for [REDACTED] tax year.
2. [REDACTED] to [REDACTED] = Assessment date to submission date of first OIC.
3. [REDACTED] to [REDACTED] = First OIC is submitted. Statute of limitations is suspended during pendency of offer, plus one year under the terms of the OIC.
4. [REDACTED] = Waiver on collections (Form 900) submitted, extending the statute expiration date to [REDACTED].
5. [REDACTED] to [REDACTED] = [REDACTED] to [REDACTED] = First bankruptcy litigation pending. The period of time during which the statute is suspended due to the OIC and due to the bankruptcy litigation is counted only once.
6. On 11/5/90, Congress amended IRC §6502(a)(1) to extend the statute of limitations from six to ten years. This amended statute provides for the expiration of the statute of limitations in this case to have occurred on [REDACTED], ten years after the date of the assessment. According to Mr. Schindler, our National Office contact, the longer of the periods between the assessment date and the new statute expiration date or the waiver date would control. As the [REDACTED] to [REDACTED] period is longer than the [REDACTED] to [REDACTED] period, the former period would control. See, e.g., Kaggen v. I.R.S., supra.

██████ to ██████ period, the former period would control. See, e.g., Kaggen v. I.R.S., supra.

7. ██████ to ██████ = Period between first and second bankruptcies. Statute of limitations suspended during this time.
8. ██████ to ██████ = Second bankruptcy pending. Statute suspended during this time, plus 6 months for bankruptcy (per IRC §6503(h)). Accordingly, the new statute expiration date is ██████. Thus, the statute of limitations on collection has expired.

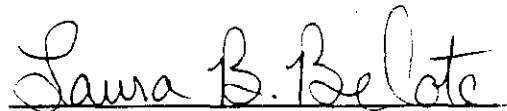
Again, although two more OICS were apparently submitted by the taxpayer on ██████ and ██████, these OICS would not be processable if they were submitted when bankruptcy litigation was pending. Mr. Schindler, our National Office contact, agreed that had the taxpayer submitted a Form 900, the statute of limitations on collection after assessment would still already have expired.

#### CONCLUSION

We have concluded that the statute of limitations on collection after assessment for ██████'s ██████ tax year has expired. If you have any questions or concerns, please do not hesitate to contact the undersigned attorney at (408) 817-4694.

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By:



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